



COMMONWEALTH OF KENTUCKY
TRANSPORTATION CABINET
transportation.ky.gov

Andy Beshear
GOVERNOR

Jim Gray
SECRETARY

November 20, 2020

Mr. Kevin Willis, Director
Office of Airport Compliance and
Management Analysis
U.S. Department of Transportation
Federal Aviation Administration
800 Independence Ave., SW
Washington, DC 20591

Dear Mr. Willis,

Included below and attached is the additional information you requested in your email dated October 26, 2020, regarding Aviation Fuel Tax Policy. Per your letter, the bullet points and responses are as follows.

1. Legislation initially establishing the sales and excise taxes, including the original tax rate;
 - a. The tax was established in 1960 and the rate was 3%.
 - b. Please see exhibit 1
2. The language of the law as it stood on December 30, 1987;
 - a. The tax rate was changed to 5% in 1968 and remained in effect at that rate until 1990.
 - b. Please see exhibit 2
3. Documentation of any changes to the law since that date impacting the rate of the tax;
 - a. The Commonwealth of Kentucky does not republish laws unless there is a change. This law was changed in 1990, increasing the rate to 6%.
 - b. Please see exhibit 3
4. Commitment of the taxing authority to advise FAA of any subsequent amendments that could affect grandfathered status.
 - a. The Kentucky Transportation Cabinet (KYTC) is not the taxing authority. That falls on the legislature. However, the KYTC is responsible for communication and the lead liaison with FAA.

- b. KYTC represents the Commonwealth of Kentucky in all transportation matters and does, hereby, assure FAA that it will advise FAA of any subsequent amendments that could affect grandfathered status.

Please feel free to contact me with any questions or issues.

Sincerely,



Jim Gray
Secretary

Attachments

Acts of the General Assembly of the Commonwealth of Kentucky



Passed at the Regular Session of the General Assembly, which was begun in the city of Frankfort, Kentucky, on Tuesday, January the fifth, 1960, and ended Friday, March the eighteenth, 1960.

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tangible personal property to be transported outside the state and thereafter used solely outside the state.

Section 16. "Tangible personal property" means personal property which may be seen, weighed, measured, felt or touched, or which is in any other manner perceptible to the senses and includes natural, artificial and mixed gas, electricity and water.

Section 17. "Machinery for new and expanded industry" shall mean that machinery used directly in the manufacturing process, which is incorporated for the first time into plant facilities established in this state, and which does not replace machinery in such plants.

Section 18. "Taxpayer" means any person liable for tax under this Article; "department" means the Department of Revenue.

Section 19. "Use" includes the exercise of any right or power over tangible personal property incident to the ownership of that property, or by any transaction in which possession is given, except that it does not include the sale of that property in the regular course of business.

Section 20. For the privilege of making "retail sales" or "sales at retail," a tax is hereby imposed upon all retailers at the rate of three percent of the gross receipts of any retailer derived from "retail sales" or "sales at retail" made within this state after June 30, 1960.

Section 21. The taxes herein imposed may be collected by the retailer from the consumer.

Section 22. It is unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax levied by Section 20 of this Article or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold or that if added it or any part thereof will be refunded.

Section 23. The department is authorized to prepare suitable brackets of prices for the collection of the taxes imposed by this Article in order to eliminate fractions of one cent, and so that the aggregate collections of taxes by a retailer,

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Kentucky Revised Statutes

ANNOTATED

OFFICIAL EDITION

Containing Statute Laws of the Commonwealth of a
General and Permanent Nature in Effect as of
January 1, 1982

Volume 6

1982 REPLACEMENT

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10. Pollution Control Equipment.

Pollution control equipment is indispensable to the operation of a limestone "crusher," which is directly engaged in manufacturing asphalt, and is mandated by federal law and regulations; therefore, it is exempt under this section. Department of Revenue v. State Stone & Contracting Co., 572 S.W.2d 421 (Ky. 1978).

11. Recycling Machinery.

Machinery used to process and reconstitute used drums is machinery used directly in a

manufacturing process and, thus, is exempt from sales and use tax. Department of Revenue ex rel. Lockett v. Allied Drum Serv., Inc., 561 S.W.2d 323 (Ky. 1978).

12. Storage Bins.

Hot-mix storage bins are used "directly in the manufacturing process" of asphalt and are exempt from the Kentucky sales and use tax as machinery for new and expanded industry. Department of Revenue v. State Stone & Contracting Co., 572 S.W.2d 421 (Ky. 1978).

139.180. "Taxpayer" — "Department." — "Taxpayer" means any person liable for tax under this chapter; "department" means the department of revenue. (Enact. Acts 1960, ch. 5, Art. I, § 18, effective February 5, 1960.)

Cited: Marcum v. Louisville Mun. Hous. Comm'n, 374 S.W.2d 865 (Ky. App. 1963).

139.190. "Use." — "Use" includes the exercise of any right or power over tangible personal property incident to the ownership of that property, or by any transaction in which possession is given, except that it does not include the sale of that property in the regular course of business. (Enact. Acts 1960, ch. 5, Art. I, § 19, effective February 5, 1960.)

Cited: George v. Scent, 346 S.W.2d 784 (Ky. App. 1961).

NOTES TO DECISIONS

1. Sales for Resale.

Though a hotel's guests paid a sales tax on the room rental charges and the price of meals, the hotel could not avoid payment of use taxes on items of personal property purchased for use in connection with the renting

of rooms and the selling of meals on the theory that the hotel acquired the property for resale to its customers who were the ultimate users. Kentucky Bd. of Tax Appeals v. Brown Hotel Co., 528 S.W.2d 715 (Ky. App. 1975).

SALES TAX

139.200. Imposition of sales tax. — For the privilege of making "retail sales" or "sales at retail," a tax is hereby imposed upon all retailers at the rate of five per cent (5%) of the gross receipts of any retailer derived from "retail sales" or "sales at retail" made within this commonwealth on and after April 1, 1968. (Enact. Acts 1960, ch. 5, Art. I, § 20; 1968, ch. 40, part I, § 4.)

Kentucky Law Journal. Kentucky Law Survey, Whiteside and Harman, Kentucky Taxation, 67 Ky. L.J. 739 (1978-1979).

Opinions of Attorney General. The sales tax statute makes no provision for exemptions in connection with retail sales to the state, its agencies and instrumentalities, or political

subdivisions, and receipts from such sales must be included in taxable gross receipts. OAG 60-542; 60-603.

The tax imposed by this section applies to motor vehicles licensed with the department of motor transportation as buses engaged in the transportation of persons for hire and the

1990
CUMULATIVE SUPPLEMENT

Kentucky Revised Statutes

Annotated

OFFICIAL EDITION

Containing the laws of permanent and general nature of the
1982 Regular Session through the 1990 Regular Session
of the General Assembly

Volume 6

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or distribution of blood or
d service and not sale.

DECISIONS

was intended to preclude the assertion of product liability claims arising out of the sale of blood components. *McKee v. Miles Labs., Inc.*, 675 F. Supp. 1060 (E.D. Ky. 1987), *aff'd*, 866 F.2d 219 (6th Cir. 1989).

2. Construction.

The plain and unambiguous words of this section clearly state that supplying blood or blood derivatives is to be considered a service by every person participating therein. *McKee v. Miles Labs., Inc.*, 675 F. Supp. 1060 (E.D. Ky. 1987), *aff'd*, 866 F.2d 219 (6th Cir. 1989).

3. Product Liability.

Because transactions involving blood and blood components are considered services, as opposed to sales, they are outside the purview of this commonwealth's product liability statute. *McKee v. Miles Labs., Inc.*, 675 F. Supp. 1060 (E.D. Ky. 1987), *aff'd*, 866 F.2d 219 (6th Cir. 1989).

A blood product transaction, as the rendition of a service, bars plaintiff's strict liability claims. *McKee v. Cutter Labs., Inc.*, 866 F.2d 219 (6th Cir. 1989).

DECISIONS

rent categories of delivery charges) exacted by defendant manufacturer in its business of selling ready-mix concrete were not gross receipts from sales of personal property and therefore were not subject to taxation under the sales and use tax law. *Revenue Cabinet v. Drum & Edwards, Inc.*, 673 S.W.2d 736 (Ky. Ct. App. 1984).

ty."

DECISIONS

a transaction to which the sales tax applies. *Revenue Cabinet v. Saylor*, 738 S.W.2d 6 (Ky. Ct. App. 1987).

expanded industry" and "pro-
fined.

Cited: Department of Revenue v. Cox
ch. Co., 650 S.W.2d 261 (Ky. Ct. App.
32).

NOTES TO DECISIONS

ANALYSIS

2. Manufacturing process.
13. Mining equipment.
14. Road paving equipment.

2. Manufacturing Process.

The "manufacturing process" language in this section is defined as material having no commercial value for its intended use before processing has appreciable commercial value for its intended use after processing by the machinery. *Revenue Cabinet v. Amax Coal Co.*, 718 S.W.2d 947 (Ky. 1986).

Machinery used in procedures essential to the total process of manufacturing are used directly in the manufacturing process, and are thus exempt from sales and use taxes. *Revenue Cabinet v. Amax Coal Co.*, 718 S.W.2d 947 (Ky. 1986).

13. Mining Equipment.

Where the mining company used an underground scoop powered by batteries which moved loosened coal to an exterior stockpile area, and the scoop required three complete sets of batteries, each of which is used for approximately three hours while the other two were being recharged, all three sets of batteries and the battery charger were used "directly" in the extraction of coal and therefore were exempt from the sales and use taxes as machinery for a new and expanded industry. *Revenue Cabinet v. Amax Coal Co.*, 718 S.W.2d 947 (Ky. 1986).

The roof bolter which was used by the mining company to help support the roof of one excavated area so that more coal could be mined in that area was an indispensable part of the mining process since additional coal could not be mined without support for the roof of previously mined areas; therefore, the roof bolter was within the exemption under KRS 139.480 from sales and use taxes for machinery for new and expanded industry. *Revenue Cabinet v. Amax Coal Co.*, 718 S.W.2d 947 (Ky. 1986).

Reclamation machinery and equipment are part and parcel of the process of extraction of minerals, ores, coal, clay, stone and natural gas; therefore, such machinery and equipment is exempt from the sales and use taxes as machinery for a new and expanded industry. *Revenue Cabinet v. Amax Coal Co.*, 718 S.W.2d 947 (Ky. 1986).

14. Road Paving Equipment.

Since construction company purchased pieces of equipment in order to expand its road paving business and not as replacement equipment, and where asphalt generated by company's plant was used exclusively by company, and where no other paving company supported the circuit court and Tax Board's ruling that construction company's business was an "integrated enterprise," the equipment was exempt. *Revenue Cabinet v. Commonwealth v. Carpenter Constr. Co.*, 763 S.W.2d 130 (Ky. Ct. App. 1988).

139.185. Corporate officers personally liable. — Notwithstanding any other provisions of this chapter to the contrary, the president, vice president, secretary, treasurer or any other person holding any equivalent corporate office of any corporation subject to the provisions of this chapter shall be personally and individually liable, both jointly and severally, for the taxes imposed under this chapter, and neither the corporate dissolution nor withdrawal of the corporation from the state nor the cessation of holding any corporate office shall discharge the foregoing liability of any such person. The personal and individual liability shall apply to each and every person holding the corporate office at the time the taxes become or became due. No person will be personally and individually liable pursuant to this section who had no authority in the management of the business or financial affairs of the corporation at the time that the taxes imposed by this chapter become or became due. Taxes as used in this section shall include interest accrued thereon at the rate provided by KRS 139.650 and all applicable penalties imposed under this chapter and all applicable penalties and fees imposed under this KRS 131.410 to 131.445 and 131.990. (Enact. Acts 1988, ch. 322, § 9, effective July 15, 1988.)

SALES TAX

139.200. Imposition of sales tax. — For the privilege of making "retail sales" or "sales at retail," a tax is hereby imposed upon all retailers at the rate of six percent (6%) of the gross receipts of any retailer derived from "retail sales" or "sales at retail" made within this Commonwealth on and

after July 1, 1990. (Enact. Acts 1960, ch. 5, Art. I, § 20; 1968, ch. 40, part I, § 4; 1990, ch. 476, Pt. VII A, § 617, effective July 1, 1990.)

Journal of Mineral Law & Policy. Comments, The Sales Tax Exemption for Machinery for New and Expanded Industry Applied to Coal Mining After Amax Coal Company, 3 J.M.L. & P. 551 (1988).

Opinions of Attorney General. Since the motor vehicle usage tax set forth in KRS 138.460 is paid by the purchaser, the sales tax does not apply to unclaimed vehicles sold at auction by city for towing and storage costs. OAG 82-287.

Where a customer of a bank places an order for the purchase of certain gold coins which are neither owned nor held by the bank and directs the bank to place the order with a coin dealer whose place of business is out of Kentucky, where the bank places the order with the coin dealer who then forwards the coins to the bank for delivery to the customer and where the customer then pays the bank the purchase price of the coins and the bank remits to the seller the purchase price less a

small commission for acting as agent in the transaction, the bank would be a retailer within the meaning of KRS 139.100 and would be subject to the sales tax imposed under this section in the event that the out-of-state coin dealer was not a retail permit holder under the Kentucky Sales and Use Tax Act. Since the sales tax would apply to the bank in the event that the out-of-state coin dealer was not a retail permit holder, levy of the use tax would not occur under the provisions of KRS 139.500; however, if the sales tax were not applicable, the bank would be liable for the use tax pursuant to KRS 139.340. OAG 83-217, withdrawing OAG 74-901.

Cited: Genex/London, Inc. v. Kentucky Bd. of Tax Appeals, 622 S.W.2d 499 (Ky. 1981); Revenue Cabinet v. Moors Resort, Inc., 675 S.W.2d 859 (Ky. Ct. App. 1984); Stoner Creek Stud, Inc. v. Revenue Cabinet, 746 S.W.2d 73 (Ky. Ct. App. 1987).

NOTES TO DECISIONS

ANALYSIS

- 0.1. Constitutionality.
- 0.2. No ambiguity.
- 0.3. No double taxation.
5. Proceeds to out-of-state partners.
6. Out-of-state purchaser.
- 6.1. Goods taken out of state.
7. Mobile homes.
8. Delivery charges.

0.1. Constitutionality.

The Legislature may properly classify occupations for tax purposes based on the competitive environment in which they operate and the overall economic impact on the state economy. The different tax treatment for airlines, truck lines, barge lines, bus lines and railroad lines can be justified by their different competitive environment and their different significance to the overall state economy; the railroads and barges are critical to the marketing of Kentucky coal; the exemption for barge and rail lines can be justified as a reasonable effort to maintain the viability of transportation systems which are necessary to the state's economy and threatened by the great competitiveness of other forms of transportation. Although similarities can be found whereby airlines, railroads and barges could be uniformly classified, there are many dissimilarities. Thus, the Legislature's failure to provide airlines with a similar exemption does not make the application of sales tax unconstitutional. *Delta Air Lines v. Commonwealth*, Revenue Cabinet, 689 S.W.2d 14 (Ky. 1985).

0.2. No Ambiguity.

The mere existence of other related sections and regulations concerning sales tax

does not make this section ambiguous; KRS 139.260 creates a presumption to be used when the facts are not completely developed to support the imposition of a tax. There is no ambiguity or confusion because of KRS 139.470(1); if the revenue statute conflicts with the Kentucky or United States Constitutions, it is simply void, but it is not ambiguous. *Delta Air Lines v. Commonwealth*, Revenue Cabinet, 689 S.W.2d 14 (Ky. 1985).

0.3. No Double Taxation.

If an airline pays the Kentucky sales tax on fuel it purchases in Kentucky, it would not be subjected to any additional use taxes from any other jurisdiction whose air space it might use while consuming the fuel or other items of tangible personal property; Kentucky is not imposing any tax on items consumed over Kentucky which were purchased in other states. Thus, there is no double taxation. *Delta Air Lines v. Commonwealth*, Revenue Cabinet, 689 S.W.2d 14 (Ky. 1985).

5. Proceeds to Out-of-State Partners.

This section and KRS 139.260 impose the five percent sales tax on the gross receipts of all retail sales. Therefore, the taxpayer's argument that a portion of such receipts were paid to an out-of-state partner is irrelevant; as such, the Board of Tax Appeals and the circuit court erred, as a matter of law, in allowing the taxpayer to exempt sales of various personal property items from the sales and use tax on the basis that the proceeds from the sales were forwarded to out-of-state partners. *Department of Revenue v. Cox Mach. Co.*, 650 S.W.2d 261 (Ky. Ct. App. 1982).

6. Out-of-State Purchaser.

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